

Docket No.: MASIMO.7CP1C11

June 15, 2005  
Page 1 of 1

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### TRANSMITTAL LETTER

Appl. No. : 10/676,534  
Applicants : Mohamed K. Diab et al.  
Filed : September 30, 2003  
TC/A.U. : 3736  
Examiner : Eric F. Winakur

Title : SIGNAL PROCESSING  
APPARATUS

Docket No. : MASIMO.7CP1C11  
Customer No. : 20,995

### Certificate Of Mailing

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, on

June 15, 2005

(Date)

John M. Grover, Reg. No. 42,610

### MAIL STOP PETITION

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith for filing in the above-identified application are the following enclosures:

- (X) a Petition to Waive the Copy Requirement under 37 C.F.R. §1.183;
- (X) an Information Disclosure Statement and PTO/SB/08 equivalent listing 256 references for consideration;
- (X) a check in the amount of \$400; and
- (X) a return prepaid postcard.

The fee has been calculated as shown below:

FEE CALCULATION				
FEE TYPE		FEE CODE	CALCULATION	TOTAL
Petition	1.17(f)	(\$400)		\$400
			<b>TOTAL FEE DUE</b>	<b>\$400</b>

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 11-1410.

John M. Grover  
Registration No. 42,610  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/676,534  
Applicants : Mohamed K. Diab et al.  
Filed : September 30, 2003  
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United States Patent and Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

**PETITION TO WAIVE THE COPY REQUIREMENT UNDER 37 C.F.R. §1.183**

Sir:

The Applicants submit herewith an Information Disclosure Statement and accompanying PTO/SB/08 equivalent listing 256 references. The references are being submitted in accordance with M.P.E.P. § 2001.06(c) providing that the Applicants identify the existence of litigation and other information arising from litigation. In the present case, the references (listed on the present PTO/SB/08) correspond to litigation in one or more parent patents or patent families and the non U.S. patent references fill roughly five (5) document boxes. Physical copies of these references have been filed with an identical Information Disclosure Statement in copending application Serial Number 10/779,033, filed February 13, 2004, titled "*Signal Processing Apparatus*," Attorney Docket No. MASIMO.007C4. The Applicants understand that the physical copies in the '033 application have been scanned and electronically associated with the '033 application in accordance with Patent Office paperless technologies. In addition to the '033 application, the Applicants are filing the attached Information Disclosure Statement in the following applications, each of which is owned by the present

**Application No. :** 10/676,534  
**Litigation IDS**

Assignee, and each of which claims a priority benefit under 35 U.S.C. § 120 to one or more of the litigated patents:

1. U.S. Pat. App. Ser. No. **09/111,604**, Atty. Dock. No. MASIMO.007C3
2. U.S. Pat. App. Ser. No. **10/839,309**, Atty. Dock. No. MASIMO.1FW1C6
3. U.S. Pat. App. Ser. No. **09/110,542**, Atty. Dock. No. MASIMO.7CP1C3
4. U.S. Pat. App. Ser. No. **09/144,897**, Atty. Dock. No. MASIMO.7CP1C4
5. U.S. Pat. App. Ser. No. **09/195,791**, Atty. Dock. No. MASIMO.7CP1C5
6. U.S. Pat. App. Ser. No. **10/838,814**, Atty. Dock. No. MASIMO.7CP1C9D1
7. U.S. Pat. App. Ser. No. **10/838,593**, Atty. Dock. No. MASIMO.7CP1C9C1
8. U.S. Pat. App. Ser. No. **10/667,050**, Atty. Dock. No. MASIMO.7CP1C10
9. U.S. Pat. App. Ser. No. **10/676,534**, Atty. Dock. No. MASIMO.7CP1C11
10. U.S. Pat. App. Ser. No. **11/003,321**, Atty. Dock. No. MASIMO.7CP1C12
11. U.S. Pat. App. Ser. No. **11/070,081**, Atty. Dock. No. MASIMO.7CP1C13

Because the extraordinary burden of providing twelve (12) copies of the same five (5) boxes of documents (11 and the 1 in the '033 application), the Applicants hereby petition under 37 C.F.R. § 1.183 to waive the copy requirement of 37 C.F.R. § 1.98, and to have the electronic versions of the references already available to the Patent Office in the '033 application, associated with the present application.

The Applicants also note that the present petition is being filed in cooperation with and on the advice of Mr. Michael L. Lewis, Legal Advisor in the Office of Patent Legal Administration of the U.S. Patent & Trademark Office. At his direction, a courtesy copy of this petition is being forwarded to his office.

Please feel free to contact the undersigned at (949) 721-2946 or at the number listed below if you have any questions regarding this Petition.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

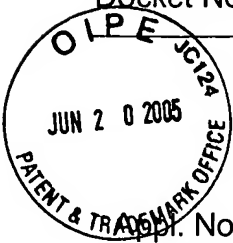
Dated: June 15, 2005

By: 

John M. Grover  
Registration No. 42,610  
(949) 760-0404

cc: Mr. Michael L. Lewis, Office of Patent Legal Administration

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061405

**INFORMATION DISCLOSURE STATEMENT**

App. No. : 10/676,534  
Applicants : Mohamed K. Diab et al.  
Filed : September 30, 2003  
TC/A.U. : 3736  
Examiner : Eric F. Winakur

Title : SIGNAL PROCESSING  
APPARATUS

Docket No. : MASIMO.7CP1C11  
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Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Enclosed for filing in the above-identified application is an Information Disclosure Statement by Applicant (PTO/SB/08 equivalent) listing 256 references to be considered by the Examiner.

This Information Disclosure Statement is being filed before the receipt of a first Office Action on the merits, and presumably no fee is required. If a first Office Action on the merits was mailed before the mailing date of this Statement, the Commissioner is authorized to charge the fee set forth in 37 C.F.R. § 1.17(p) to Deposit Account No. 11-1410.

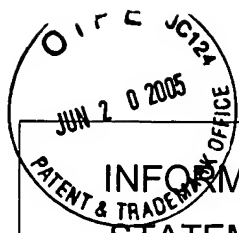
Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 15, 2005

By:

John M. Grover  
Registration No. 42,610  
Attorney of Record  
Customer No. 20,995  
(949) 760-0404



# INFORMATION DISCLOSURE STATEMENT BY APPLICANT

Application No.	10/676,534
Filing Date	September 30, 2003
First Named Inventor	Mohamed K. Diab
Art Unit	3736
Examiner	Eric F. Winakur
Attorney Docket No.	MASIMO.7CP1C11

(Multiple sheets used when necessary)

SHEET 1 OF 14

## U.S. PATENT DOCUMENTS

Examiner Initials	Cite No.	Document Number Number - Kind Code (if known) Example: 1,234,567 B1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear
	1	Re. 35,122	12/19/1995	Corenman et al.	
	2	3,638,640	02/01/1992	Shaw	
	3	4,038,536	07/26/1977	Feintuch	
	4	4,157,708	06/12/1979	Imura	
	5	4,458,691	07/10/1984	Netravali	
	6	4,537,200	08/27/1995	Widrow	
	7	4,582,068	04/15/1986	Phillipps et al.	
	8	B1 4,653,498	04/18/1989	New, Jr. et al.	
	9	4,653,498	03/31/1987	New, Jr. et al.	
	10	4,667,680	05/26/1987	Ellis	
	11	4,714,341	12/22/1987	Hamaguri et al.	
	12	4,751,931	06/21/1988	Briller et al.	
	13	4,793,361	12/27/1988	DuFault	
	14	4,799,486	01/24/1989	DuFault	
	15	4,799,493	01/24/1989	DuFault	
	16	4,800,885	01/31/1989	Johnson	
	17	4,802,486	02/07/1989	Goodman et al.	
	18	4,863,265	09/05/1989	Flower et al.	
	19	4,867,571	09/19/1989	Frick et al.	
	20	4,869,254	09/26/1989	Stone et al.	
	21	4,883,353	11/28/1989	Hausman et al.	
	22	4,911,167	03/27/1990	Corenman et al.	
	23	4,928,692	05/29/1990	Goodman et al.	
	24	4,934,372	6/19/1990	Corenman et al.	
	25	4,949,710	08/21/1990	Dorsett et al.	
	26	4,951,680	08/28/1990	Kirk et al.	
	27	4,955,379	09/11/1990	Hall	
	28	4,960,126	10/02/1990	Conlon et al.	
	29	4,967,571	11/06/1960	Sporri	

Examiner Signature

Date Considered

\*Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

T<sup>1</sup> - Place a check mark in this area when an English language Translation is attached.

<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>	Application No.	10/676,534
	Filing Date	September 30, 2003
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
SHEET 2 OF 14	Attorney Docket No.	MASIMO.7CP1C11

U.S. PATENT DOCUMENTS					
Examiner Initials	Cite No.	Document Number Number - Kind Code (if known) Example: 1,234,567 B1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear
	30	5,036,857	08/06/1991	Semmlow et al.	
	31	5,040,201	08/13/1991	Slump	
	32	5,041,187	08/20/1991	Hink et al.	
	33	5,054,495	10/08/1991	Uemura et al.	
	34	5,243,993	09/14/1993	Alexander et al.	
	35	5,379,774	01/10/1995	Nishimura et al.	
	36	5,494,032	02/27/1996	Robinson et al.	
	37	5,853,364	12/29/1998	Baker, Jr. et al.	
	38	6,083,172	07/04/2000	Baker, Jr. et al.	
	39	6,411,833 B1	06/25/2002	Baker, Jr. et al.	

FOREIGN PATENT DOCUMENTS						
Examiner Initials	Cite No.	Foreign Patent Document Country Code-Number-Kind Code Example: JP 1234567 A1	Publication Date MM-DD-YYYY	Name of Patentee or Applicant	Pages, Columns, Lines Where Relevant Passages or Relevant Figures Appear	T <sup>1</sup>
	40	EP 0 359 206 B1	03/29/1995	Kanda		
	41	JP-A-63-171539	07/15/1988	(In Japanese)		
	42	WO 92/15955	09/17/1992	Diab et al.		
	43	WO 97/00041	01/03/1997	Yorkey		
	44	WO 98/42249	10/01/1998	Baker et al.		
	45	WO 98/43071	10/01/1998	Baker et al.		

NON PATENT LITERATURE DOCUMENTS			
Examiner Initials	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.	T <sup>1</sup>
	46	U.S. District Court, Central District of California (Western Division - Los Angeles) Civil Docket for Case #: 2:00-cv-06506-MRP-AJW.	
	47	U.S. District Court, Central District of California (Western Division - Los Angeles) Civil Docket for Case #: 2:01-cv-07292-MRP-AJW.	
	48	U.S. District Court, Central District of California (Western Division - Los Angeles) Civil Docket for Case #: 2:01-cv-07293-MRP-AJW.	
	49	Complaint for Patent Infringement of US. Patent Nos. 6,206,830 B1 and 6,157,850; Demand for Jury Trial, dated 7/6/01.	

Examiner Signature	Date Considered
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	Filing Date	September 30, 2003
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
SHEET 3 OF 14	Attorney Docket No.	MASIMO.7CP1C11

### NON PATENT LITERATURE DOCUMENTS

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	50	First Amended Complaint for Patent Infringement of U.S. Patent Nos. 6,206,830 B1, 6,157,850 and 6,263,222 B1; Demand for Jury Trial, dated 7/18/01.	
	51	Nellcor's and Mallinckrodt's Answer to First Amended Complaint, dated 8/20/01.	
	52	Nellcor's and Mallinckrodt's Amended and Supplemental Answer and Counterclaims to Masimo Corporation's First Amended Complaint in Case No. CV-01-7292 MRP (AJWx), dated 5/31/02.	
	53	Masimo's Reply to Nellcor's and Mallinckrodt's Amended and Supplemental Answer and Counterclaims to Masimo's First Amended Complaint in Case No. CV-01-7292 MRP (AJWx), dated 8/27/02.	
	54	Complaint for Patent Infringement of US. Patent Nos. 4,653,498, 5,078,136 and Re. 36,000, dated 11/17/99.	
	55	Defendant Masimo Corp.'s Answer and Counterclaims, dated 12/8/99.	
	56	Mallinckrodt's and Nellcor's Reply to Counterclaims of Masimo; Demand for Jury Trial, dated 12/28/99.	
	57	Mallinckrodt's and Nellcor's Amendment Complaint for Patent Infringement of U.S. Patent Nos. 4,653,498, 5,078,136, Re. 35,122 and Re. 36,000; Demand for Jury Trial, dated 1/24/00.	
	58	Defendant Masimo Corp.'s Amended Answer and Counterclaims, dated 2/7/00.	
	59	Nellcor's Reply to Amended Counterclaims of Masimo Corporation, dated 2/22/00.	
	60	Mallinckrodt's and Nellcor's Second Amended Complaint for Patent Infringement of U.S. Patent Nos. 4,621,643, 4,653,498, 4,700,708, 5,078,247, Re. 35,122 and Re. 36,000; Demand for Jury Trial, dated 10/13/00.	
	61	Masimo Corp.'s Answer to Plaintiffs' Second Amended Complaint and Counterclaims; Demand for Jury Trial, dated 11/2/00.	
	62	Mallinckrodt Inc.'s and Nellcor Puritan Bennett, Inc.'s Reply to Counterclaims of Masimo Corporation; Demand for Jury Trial, dated 12/1/00.	
	63	Nellcor's and Mallinckrodt's First Amended and Supplemental Reply and Counterclaims to Counterclaims of Masimo Corporation, dated 5/31/02.	
	64	Masimo's Reply to Nellcor's and Mallinckrodt's First Amended and Supplemental Reply and Counterclaims to Counterclaims of Masimo, dated 8/27/02.	
	65	Nellcor's Third Amended Complaint for Patent Infringement of U.S. Patent Nos. 4,621,643, 4,653,498, 4,700,708, 5,078,136, 5,807,247 and Re. 36,000; Demand for Jury Trial, dated 7/31/02.	
	66	Masimo's Answer to Counterclaims to Nellcor's Third Amended Complaint for Patent Infringement; Demand for Jury Trial, dated 8/27/02.	
	67	Complaint for Patent Infringement of U.S. Patent No. 5,490,505; Demand for Jury Trial, dated 10/8/99, entered 10/15/99.	

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	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
SHEET 4 OF 14	Attorney Docket No.	MASIMO.7CP1C11

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	68	Mallinckrodt's and Nellcor's Answer and Counterclaims, dated 11/1/99.	
	69	Plaintiff's Masimo Corp.'s Reply to Defendants' Counterclaims, dated 11/22/99.	
	70	Amended Complaint for Patent Infringement of U.S. Patent Nos. 5,490,505 and 6,036,642; Demand for Jury Trial, dated 4/5/00, entered 4/18/00.	
	71	Answer to First Amended Complaint and Amended Counterclaim; Demand for Jury Trial, dated 5/1/00.	
	72	Plaintiff Masimo Corp.'s Reply to Defendants' First Amended Counterclaims; Demand for Jury Trial, dated 5/18/00.	
	73	Nellcor's and Mallinckrodt's Amended and Supplemental Answer to Counterclaims to Masimo Corporation's First Amended Complaint in Case No. CV-01-7293-MRP (AJWx), dated 5/31/02.	
	74	Masimo's Reply to Nellcor's and Mallinckrodt's Amended and Supplemental Answer and Counterclaims to Masimo's First Amended Complaint in Case No. -01-7293 MRP (AJWx), dated 8/27/02.	
	75	Memorandum of Decision re: Mallinckrodt and Nellcor's Motion for Summary Judgment of Invalidity of Claim 19 of U.S. Patent No. 5,490,505.	
	76	Minute Order 1) Granting Defendants' Motion for Summary Judgment of Non-Infringement of '642 Patent; 2) Denying Plaintiff's Motion for Preliminary Injunction; 3) Granting Plaintiff's Ex Parte Application to Strike Defendants' Supplemental Declaration, dated 10/4/00, entered 10/6/00.	
	77	Defendant's Mallinckrodt's and Nellcor's Statement of Uncontroverted Facts and Conclusions of Law.	
	78	Findings of Fact and Conclusions of Law Regarding Masimo's Motion for Preliminary Injunction.	
	79	Judgement in <i>Masimo Corp. v. Mallinckrodt Inc.</i> , Court of Appeals for the Federal Circuit No. 01-1038, dated 8/8/01, entered 10/17/01.	
	80	Memorandum of Decision and Order Re: 1) Claim Construction; 2) Motion to Strike Masimo's Declarations, entered 2/27/03.	
	81	Final Judgment, entered 8/6/04.	
	82	Memorandum of Decision and Order Re: Post-Trial Motions, dated 7/12/04, entered 7/14/04.	
	83	Memorandum and Points and Authorities in Support of Mallinckrodt's and Nellcor's Motion for Summary Judgment of Invalidity of Claim 19 of U.S. Patent No. 5,490,505, dated 8/30/00.	
	84	Masimo's Opposition to Defendants' Motion for Summary Judgment for Summary Judgment of Invalidity of Claim 19 of U.S. Patent No. 5,490,505, dated 9/21/00.	
	85	Reply Memorandum and Points and Authorities in Support of Mallinckrodt's and Nellcor's Motion for Summary Judgment of Invalidity of U.S. Patent No. 5,490,505, dated 10/13/00.	

Examiner Signature	Date Considered
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<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>	Application No.	10/676,534
	Filing Date	September 30, 2003
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
SHEET 5 OF 14	Attorney Docket No.	MASIMO.7CP1C11

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	86	Brief of Plaintiff-Appellant Masimo Corporation, dated 12/8/00.	
	87	Non-Confidential Brief of Defendants-Cross Appellants Mallinckrodt inc and Nellcor Puritan Bennett, Inc., dated 1/22/01.	
	88	Nonconfidential Reply Brief of Plaintiff-Appellant Masimo Corporation, dated 2/6/01.	
	89	Masimo Corp.'s Initial Claim Construction on Its Asserted Patents, dated 6/21/02.	
	90	Declaration of Jack Goldberg in Support of Masimo Corp.'s Initial Claim Construction on Its Asserted Patents, dated 6/21/02.	
	91	Notice of Errata and Corrected Appendices for Mallinckrodt's and Nellcor's Statement Regarding Disputed Claim Terms of the Asserted Patents, dated 9/12/02 (Final Version).	
	92	Expert Declaration of Robert T. Stone Re: Masimo's Patent-In-Suit, dated 7/18/02.	
	93	Masimo Corp.'s Opening Memorandum of Claim Construction, dated 9/16/02.	
	94	Nellcor's and Mallinckrodt's Opening Claim Construction Brief on the Patent-In-Suit, dated 9/16/02.	
	95	Masimo Corp.'s Reply Memorandum on Claim Construction, dated 10/18/02.	
	96	Nellcor's and Mallinckrodt's Reply Claim Construction Brief on the Patents-In-Suit, dated 10/18/02.	
	97	Nellcor's Trial Brief on Indefiniteness, dated 3/23/04.	
	98	Masimo's Trial Brief of Indefiniteness, dated 3/24/04.	
	99	Nellcor's Trial Brief re Inequitable Conduct, dated 3/23/04.	
	100	Masimo's Trial Brief regarding Inequitable Conduct, dated 3/24/04.	
	101	Nellcor's Memorandum of Points and Authorities in Support of: (1) Argument on Bench Trial and (2) Renewed Motion for Judgment as a Matter of Law or Alternatively, a New Trial.	
	102	Masimo's Memorandum of Points and Authorities in Opposition to Nellcor's (1) Argument on Bench Trial and (2) Renewed Motion for Judgment as a Matter of Law or for a New Trial.	
	103	Memorandum of Points and Authorities in Support of Masimo's Motion for (1) Judgment as a Matter of Law that Nellcor Literally Infringes Claim 17 of the '850 Patent and Claims 16 and 23 of the '222 Patent; (2) A Permanent Injunction; (3) An Accounting for Infringing Sales Occurring in 2004; and (4) Prejudgment Interest.	

Examiner Signature	Date Considered
<b>*Examiner:</b> Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.	

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	Filing Date	September 30, 2003
	First Named Inventor	Mohamed K. Diab
	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
SHEET 6 OF 14	Attorney Docket No.	MASIMO.7CP1C11

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	104	Nellcor's Opposition to Masimo's Motion for Judgment as a Matter of Law and Other Post-Trial Issues.	
	105	Brief of Defendant-Appellant Masimo Corporation.	
	106	Confidential Brief of Plaintiffs-Cross Appellants Mallinckrodt, inc. and Nellcor Puritan Bennett, Inc.	
	107	Letter to Mr. Hornbaly, Clerk of Fed. Cir., indicating that the parties agreed that the Confidential Brief (Ref. No. 106) do not need to remain confidential.	
	108	Reply Brief of Defendant-Appellant Masimo Corporation.	
	109	Reply Brief of Plaintiffs-Cross Appellants Mallinckrodt, Inc. and Nellcor Puritan Bennett, Inc.	
	110	Nellcor's Response to Masimo's First Set of Interrogatories in the Consolidated Case to Mallinckrodt Inc. and Nellcor Puritan Bennett, Inc. (Nos. 1-8), dated 8/23/02.	
	111	Nellcor's Supplemental Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 6/24/03.	
	112	Nellcor's Revised and Corrected Supplemental Response to Masimo's First Set of Interrogatories in the Consolidated Case (No. 2), dated 6/25/03.	
	113	Service Manual: Nellcor -100 Pulse Oximeter, 5 button model, Copyright 1993.	
	114	J. Corenman Computation Notebook, marked 06/23/82 - 06/22/83.	
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	Art Unit	3736
(Multiple sheets used when necessary)	Examiner	Eric F. Winakur
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### NON PATENT LITERATURE DOCUMENTS

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